

Date of decision: 13/02/96

For Approval and Signature :

Hon'ble MR.JUSTICE M.R.CALLA

Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANILAL D MEHTA

vs

ATIC INDUSTRIES LTD

Appearance: MR AVINASH K MANKAD for Petitioner
MR.GANDHI FOR NANAVATI ASSOCIATES for Respondent No. 1

Coram : MR.JUSTICE M.R.CALLA

Date :13.2.1996.

Oral Judgment :

The petitioner herein was working as store clerk with the respondent company. Having completed about 20 years of service with the respondent company through his letter dated 9.8.1988 when the petitioner was aged 39 years he had tendered his voluntary retirement as given out by the learned counsel for the petitioner. It has also been given out by the learned Advocate for the petitioner that at that time the petitioner was drawing the salary of Rs.2300/- per month. The petitioner's request for voluntary retirement was accepted by the respondent company on 10.8.1988 and in the letter of acceptance the respondent company also mentioned that the petitioner may collect his dues after obtaining clearance certificate. The letter of acceptance and the request of voluntary retirement issued by the company on 10.8.1988

was sent by registered post acknowledgment due. There is dispute between the parties that this letter of acceptance dated 10.8.1988 was served upon the petitioner or not. According to the respondent company there is acknowledgment due and signature of one Mr.M.D.Mehta, the petitioner herein disputes his signature and the learned counsel for the petitioner has made a grievance that the concerned postman who had served has not been examined before the Labour Court. The petitioner has denied his signature on the acknowledgment due dated 16.8.1988. On 17.8.1988 the petitioner sent letter to the respondent company seeking to withdraw his request for voluntary retirement and submitted that it had been given by mistake and after giving serious thought he wanted to withdraw the request for voluntary retirement. Mr.Gandhi, learned counsel for the respondent has pointed out that the letter was sent to the petitioner on 19.8.1988 informing the petitioner that he may hand over vacant possession of the company's quarter retained by him and thereafter he may collect the dues and thereafter on 25.8.1988 yet another letter was sent with regard to the payment of gratuity and the due amount of gratuity i.e. sum of Rs.21,190/- was also sent to the petitioner through cheque dated 25.8.1988 vide registered letter dated 31.8.1988 which the petitioner did not accept.

It has been given out by the learned counsel for the petitioner that the petitioner has daughter studying in Std.10th. and two minor sons. After considering all the aspects he had decided to withdraw the request of voluntary retirement and whereas the withdrawal sent by the petitioner did not find favour with the respondent company he approached the conciliation officer on 27.9.1988 and industrial dispute was referred to the Labour Court, Navsari on 17.10.1988. The Labour Court, Navsari passed the award on 31.7.1995 denying the relief of reinstatement but directed that the dues which were payable to him under the scheme of voluntary retirement may be paid to him with 18% interest from the date the request for voluntary retirement was accepted. Against this award dated 31.7.1995 passed by the Labour Court, Valsad in Reference (LCV) No. 1341 of 1990 the present petition has been filed on 7.11.1995. When the matter came up before the Court, notice was issued as to why this petition may not be admitted and finally disposed of at the admission stage. This order is treated as good as issue of the Rule. Thereafter, the affidavit-in-reply dated 11.12.1995 was filed by the respondent company. On 19.12.1995 a statement was made by Mr.Mankad, learned Counsel for the petitioner that he would not claim any wages for the period right from the date of the

acceptance of the request of voluntary retirement uptill now, provided he is taken back in service with continuity. The learned counsel for the respondent sought time to seek instructions. Thereafter on 10.1.1996, it was stated by the learned counsel for the respondent company that the proposal made by Mr.Mankad was not acceptable to the company and the time was sought by Mr.Gandhi to place the letter of acceptance dated 10.8.1988 on record. On 11.1.1996, the respondent company filed additional affidavit. On 31.1.1996 further time was sought by Mr.Gandhi to seek further instructions and Mr.Mankad was also asked to contact his client to consider counter offer made by Mr.Gandhi for accepting the lump- sum amount to be paid by the respondent company and the matter was posted for 12.2.1996.

The only question which would have been required to be considered in this case was as to whether the respondent company was obliged to pay voluntary retirement dues under the voluntary retirement scheme of 1985 i.e. 12 months salary for completed services of more than 19 years and the other conditions which were mentioned in para 3 of this voluntary retirement scheme which is annexed with the Special Civil Application at page Nos. 62 and 63 because such dues were to be paid at the time of the voluntary retirement and as to what would be the effect of non payment of such dues simultaneous to the service of the order of acceptance of the request of voluntary retirement and as to whether the respondent company could impose condition of the vacation of the quarter before paying such dues under the voluntary retirement scheme as a condition precedent and pre-requisite to the payment because there was no dispute about the clearance certificate except the amount which may have been taken by the petitioner on credit. However, during the course of arguments on 12.2.1996 both the sides wanted to place their own terms of proposed settlement on record and the same have been produced before the court by the parties today which are taken on record. After the further discussions and arguments both the sides have now agreed as under :

- [1] Should the respondent company pay a sum Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand only.) in all to the petitioner and grant him time upto 31.7.1996, to vacate the quarter the petitioner is prepared to forgo the entire claim putting an end to the entire controversy for all times to come. Mr.Gandhi has agreed to this proposal of payment of Rs.1,75,000/- (Rupees One Lakh Seventy Five

Thousand only.) with the rider that the amount of Rs.75,000/- (Rupees Seventy Five Thousand only) shall be paid into the hands of the petitioner on or before 27.2.1996 and the rest of the amount of Rs.1,00,000/- (Rupees One Lakh only.) shall be paid into the hands of the petitioner on the day on which he vacates the quarter which is retained by him at any time but not later than 31.7.1996. Mr.Gandhi has further agreed to the condition putforward by Mr.Mankad that the respondent company would not come in the way of the petitioner and would rather help and co.operate the petitioner in the matter of withdrawing the provident fund amount which is lying with the concerned authorities under the control of the Government and it has also been given out by Mr.Gandhi that the due amount of provident fund in relation to the petitioner has already been deposited with the concerned authorities till the petitioner was in service i.e. til 1988. Mr.Gandhi has further agreed to yet another condition putforward by Mr.Mankad on behalf of the petitioner that the criminal case which has been filed by the respondent company against the petitioner in relation to the retaining of the possession of the company's quarter shall also be withdrawn by the petitioner company immediately after the vacant possession of the quarter is handed over to the respondent company.

[2] While agreeing to all these conditions putforward by Mr.Mankad, Mr.Gandhi simply seeks to ensure that in no case the quarter is retained by the petitioner beyond 31.7.1996 and he seeks a mention that on the basis of the aforesaid agreed terms the direction be issued by this court with the further mention that failure on the part of the petitioner to vacate the quarter on or before 31.7.1996 would entail the liability of contempt proceedings against the petitioner and Mr.Mankad insists that similar liability should also be mentioned against the respondent company if the respondent company fails to abide by the agreed time schedule.

[3] All these terms and conditions are acceptable to both the sides in presence of their respective clients i.e. Mr.M.D.Mehta, the petitioner who is present in person and Mr.S.D.Agarkar, Assistant General Manager of the Atic Industries Limited.

On the basis of the terms as agreed between the parties the following directions are issued to the concerned parties :

[1] Respondent Company shall pay a sum of Rs.1,75,000/- (Rupees One lakh Seventy Five Thousand only.) in all to the petitioner. Out of this Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand only.) Rs.75,000/- (Rupees Seventy Five Thousand only) shall be paid to the petitioner on or before 27.2.1996 and the rest of sum Rs.1,00,000/(Rupees One Lakh only.) shall be paid into the hands of the petitioner any time on or before 31.7.1996 i.e. the day on which the petitioner vacates the possession of the company's quarter retained by him, by handing it over to the respondent company but in no case the petitioner shall retain the quarter beyond 31.7.1996 and in case the petitioner does not vacate the quarter on or before 31.7.1996 the respondent company will be under no obligation to pay the remaining sum Rs.1,00,000/(Rupees One lakh only.) which is agreed to be paid otherwise as above.

[2] Failure to comply with the time schedule and the terms as agreed would entail the liability of contempt against either of the two sides.

[3] Respondent Company will be under an obligation to withdraw the criminal case filed against the petitioner in relation to the retaining of the company's quarter immediately after vacating the quarter and handing over the possession of the said quarter to the respondent company by the petitioner.

[4] The respondent company shall help and co.operate the petitioner in withdrawing the provident fund amount which is lying with the concerned authorities and which is deposited till the period the petitioner was in service i.e.1988.

Proposals for settlement dated 13.2.1996 tendered by the petitioner and the respondent company shall form the part of the record of this case.

This Special Civil Application is decided in the terms as aforesaid and the Rule is also made absolute accordingly.No order as to costs.
